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UNITED STATES DISTRICT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

MARTIN CROWSON,

Plaintiff,

vs.

WASHINGTON COUNTY, et al.,

Defendants.

**MEMORANDUM IN OPPOSITION TO MOTION
TO STRIKE**

Case No. 2:15-cv-880-RJS

Judge Robert J. Shelby

Plaintiff Martin Crowson, by and through counsel submits this Memorandum in Opposition to Motion to Strike.

The Court should deny the Washington County Defendants' Motion to Strike the Amended Complaint because it was timely when it was filed on March 14, 2016. As set forth in the following paragraphs, the filing deadline for an amended complaint was March

14, 2016.

The defendants filed their Rule 12(b)(6) Motion to Dismiss on February 17, 2016. Federal Rule of Civil Procedure 15(a)(1)(B) allows a party to amend its pleading within “21 days after service of a motion under Rule 12(b) . . .” Fed. R. Civ. P. 15(a). Federal Rule of Civil Procedure 6(d) states that “[w]hen a party may or must act within a specified time after service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).” Fed. R. Civ. P. 6(d). Federal Rule of Civil Procedure 5(b)(3) states that “[i]f a local rule so authorizes, a party may use the court’s transmission facilities to make service under Rule 5(b)(2)(E)” which provides for service by electronic means. Fed. R. Civ. P. 5(b)(2)(E), (b)(3).

In this case, the defendants used the Court’s electronic filing system to generate notice to the plaintiff. Pursuant to Rule 5(b)(3), that constituted service under Rule 5(b)(2)(E), which meant an additional three days were added to the filing deadline under Rule 6(d). Therefore, the filing deadline was 21 days plus three, placing it on March 12, 2016.

March 12, 2016 was a Saturday. Rule 6(a)(3) states that “if the clerk’s office is inaccessible on the last day for filing under Rule 6(a)(1), the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday . . .” That meant the plaintiff’s Amended Complaint needed to be filed on the following Monday, March 14, 2016. For these reasons, the plaintiff’s Amended Complaint was timely filed and the Court

should deny the defendants' Motion to Strike.

DATED this 31st day of March, 2016.

SCHRIEVER LAW FIRM

/s/ Ryan J. Schriever

Ryan J. Schriever
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

On the 31st day of March, 2016, the undersigned filed a copy of the foregoing Memorandum in Opposition to Motion to Strike using the Court's CM/ECF filing system which automatically generated notice to the following:

Frank D. Mylar
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/s/ Ryan J. Schriever
